



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 2

CONTRACT #: AR2476

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and CherryRoad Technologies, Inc. (Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Section 6 on the master agreement cover page is amended to provide Attachment E as "Service Offering EULAs".

Further, the following End User License Agreement (EULA) attached herein is made a part of Attachment E:

1. DR Fortress Master Services Agreement Terms.

The DR Fortress Master Services Agreement Terms are not to be construed to amend any term or condition provided outside of Attachment E.

Effective Date of Amendment: 2/9/2018

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH

 2/9/18
Contractor's Signature Date

 2/12/18
Director, State of Utah Division of Purchasing Date

Lisa Druckman
Contractor's Name (Print) **Vice President Finance**

Title (Print)

For Division of Purchasing Internal Use

Purchasing Agent	Phone #	E-mail Address	Contract #
Solomon Kingston	801-538-3228	skingston@utah.gov	AR2476



ATTACHMENT E

DRFORTRESS, LLC

MASTER SERVICE AGREEMENT TERMS

THESE MASTER SERVICE AGREEMENT TERMS ("MSA") shall apply to all orders placed under the Master Agreement with DRFortress Technologies Inc. ("DRFortress") for services ultimately provided by DRFortress LLC.

1. ORDERS

Client may request Services during the Term by executing a Sales Order or Order Amendment and delivering the same to DRFortress. Sales Orders and Order Amendments are binding upon DRFortress' execution thereof. DRFortress may reject any Sales Order or Order Amendment and refund the applicable payment for any or no reason. All Sales Orders and Order Amendments and/or any other agreements relating to Services (collectively "Order" or "Orders") are governed by and made a part of this MSA.

2. TERM

Intentionally Omitted.

3. SERVICES AND SERVICE FEES

3.1 DRFortress shall provide Services to Client subject to and in accordance with the provisions of this MSA. Subject to the terms and conditions of this MSA, DRFortress grants Client a limited and non-exclusive license to use the Datacenter and to obtain the Services in accordance with this MSA. Client acknowledges and agrees that (a) it has been granted only a license to use the Datacenter and to obtain the Services in accordance with this MSA; (b) Client has not been granted any real property interest under this MSA; and (c) Client has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances. This MSA and the rights of Client hereunder, are, without any further action by any Party, subject and subordinate to the leases for the Datacenter and all superior instruments to such leases (including, without limitation, mortgages or ground leases for the Datacenter). DRFortress hereby reserves, with respect to the Datacenter, all rights not specifically granted to Client in this MSA, including without limitation, the right (a) of access to and use of the Datacenter for its own use or the use of others; (b) to grant additional licenses to other entities or clients for the use of portions of the Datacenter and the provision of Services; and (c) to exercise or grant other rights not inconsistent with the rights granted in this MSA. DRFortress shall act as the intermediary for Client with any 3rd party building owner or landlord and, where applicable, to reasonably assist in the request of any additional access rights required by Client.

3.2 The Service Fees and Term for any Services ordered through an Order shall be listed on such Order. The Service Fees for the Services shall accrue on each Order Effective Date. Notwithstanding anything in this MSA (or any Order) to the contrary, (a) at any time on or after the expiration of the initial term of the applicable Order, the rates and fees for Services shall be subject to change, at DRFortress' sole discretion, upon 60 days' prior notice to Client, and (b) for the Power Services, DRFortress may change the rates and fees at any time, including the use of a surcharge, upon written notice to Client should the relevant utility increase its effective rate.

3.3 DRFortress shall invoice Client in advance for the Services on a monthly basis (partial months shall be billed on a pro-rata basis). Client shall pay in full all Service Fees, taxes, and surcharges for Services due at the end of each calendar month, or as otherwise indicated on the invoice ("Due Date"). If Service Fees are not paid within 60 days from the Due Date, (a) a late fee of 5% of the overdue amount shall become due and payable by Client, (b) such overdue amount will accrue interest from the Due Date to the date of payment, at an interest rate equal to the lower of 1.5% per month or the highest rate allowed under applicable law, and (c) Client shall reimburse DRFortress for all of its attorneys' fees and costs associated with DRFortress' recovery of Service Fees pursuant to this Section. DRFortress is neither responsible nor is in any way liable for any Taxes or third party charges related to the Client's activities, ownership or operation of equipment at, or attributable to, the Datacenter, including without limitation any activities, ownership, or operation by any of Client's Authorized Persons, Accompanying Persons, and Associated Entities. Without limiting the foregoing, Client shall be responsible for paying any and all Taxes separately imposed, levied or assessed against Client by, and preparing and filing any necessary return from,

any governmental, quasi-governmental or tax authorities by the date such payments and returns are due. All payments to DRFortress are exclusive of all applicable taxes, fees, surcharges, or levies whatsoever, now or in the future imposed on the transaction or the delivery of Services, all of which Client shall pay in full as invoiced by DRFortress. DRFortress may charge for, and client agrees to pay upon invoice, any relevant excise, use, or other transaction related taxes in forms including, but not limited to, a one-time tax charge or as a surcharge spread over a period of time.

3.4 If Client wishes to dispute any charge billed to Client by DRFortress (a "Disputed Amount"), Client must submit a good faith claim regarding the Disputed Amount with supporting documentation within 30 days of receipt of the relevant initial invoice. If Client does not submit a documented claim within 30 days of receipt of the relevant initial invoice, notwithstanding anything in this MSA to the contrary, Client waives all rights to: (a) dispute such Disputed Amount, (b) file a claim thereafter of any kind relating to such Disputed Amount, (c) otherwise claim that it does not owe such Disputed Amount, and/or (d) seek any set-offs or reimbursements or other amounts of any kind based upon or relating to such Disputed Amount. The foregoing notwithstanding, irrespective of whether a documented claim is submitted, Client shall pay all amounts invoiced (including Disputed Amounts) which Disputed Amounts shall be credited against future payments should DRFortress agree that such funds are not due.

4. CLIENT RIGHTS AND OBLIGATIONS

4.1 After obtaining authorization from DRFortress, Client may install Client Equipment in the Space specified for Client, as provided in the Order or as otherwise specified by DRFortress. Client shall be responsible for configuring, providing, placing, installing, upgrading, adding, maintaining, repairing and operating Client Equipment, which actions Client may engage in only to the extent permitted by, and subject to, this MSA. Client represents, warrants and covenants that Client has, and shall continue to have, the legal right and authority (including regulatory consents) to operate, configure, provide, place, install, upgrade, add, maintain and repair Client Equipment as contemplated by this MSA. Without limiting the foregoing, Client shall obtain, and maintain throughout the Term, such consent of Client's subcontractors, 3rd party providers, vendors, Sublicensees and any other parties as may be necessary for DRFortress (including any contractors or others acting at DRFortress' request) to have the right to access Client Equipment for the purpose of providing Services. In no event shall Client Equipment be construed to be fixtures. Nothing in the foregoing shall be interpreted as allowing changes (other than to the software) or additions to Client Equipment or environment without DRFortress' approval. Upon request, Client agrees to provide and update DRFortress with estimated market values for the Client Equipment.

4.2 At all times during the Term, DRFortress and Client agree to comply with the Policies, which are at all times incorporated by reference into this MSA. Client acknowledges that it has received a copy of the current Policies prior to execution of this MSA. Any modifications by DRFortress to the Policies shall be effective upon the earlier of: notice to Client or posting on the Client Services Portal. The Space shall only be accessed in accordance with DRFortress' security and access policies and rules. DRFortress shall have the right, but not the obligation, to restrict access to Client's Authorized Persons. Client shall have no license to access, use, operate or store Client Equipment (including, without limitation, conduits and cabling) in any location other than the Space as specified in the Order or as otherwise approved by DRFortress. DRFortress shall have access to the Space in order to perform Services, maintenance or repairs, to make alterations, and to show and inspect the Space. DRFortress may modify or suspend Services as necessary to comply with any law, regulation, the Policies, or as otherwise reasonably determined by DRFortress. Client may use the Space only for purposes of storing, maintaining, and operating Client Equipment in a manner consistent with the business and operations of the Datacenter. Client shall not use the Space for general office use or for any other purpose. Client agrees not to interfere with the use of the Datacenter by other clients, licensees, occupants, or tenants. If Client or any Authorized Person, Accompanying Person or Associated Entities, or the Client Equipment, interferes with the operations of the Datacenter or with any operations or equipment of any other client, licensee, occupant or

tenant of the Datacenter, Client shall promptly eliminate all such interference. If Client is unable or unwilling to eliminate such interference in a reasonable time frame based on the urgency of the circumstances, DRFortress may do so at Client's sole expense. No work or alterations to the Datacenter shall be performed by or on behalf of Client unless approved in writing and in advance by DRFortress, and Client shall not cause any liens to be imposed upon the Datacenter, including any mechanic's lien or similar lien filed by any Authorized Person, Accompanying Person, or Associated Entity. Without limiting the foregoing, in the event any such lien is filed, Client shall be responsible for the immediate satisfaction, payment or bonding of any such lien and any costs incurred by DRFortress in connection therewith.

4.3 If Client is entitled to Interconnection Services under any Order(s), Client shall follow the procedures and rules set forth in this Section and in applicable provisions of the Order(s). Notwithstanding anything to the contrary set forth herein, Client shall not have any right whatsoever to perform Interconnection Services except to the extent otherwise agreed to in writing by DRFortress. All Interconnection Services shall be provisioned exclusively by DRFortress and no Interconnection Services shall be performed in any other manner or location whatsoever, including without limitation wireless Interconnection Services, unless otherwise designated by DRFortress in its sole and absolute discretion. Client acknowledges that DRFortress does not make any representations or warranties regarding Client's ability to establish Interconnection Services with other clients, licensees or tenants in the Datacenter. Client's inability to establish Interconnection Services with other clients, licensees or tenants in the Datacenter shall not affect Client's obligations under this MSA.

4.4 Intentionally Omitted

4.5 In the event DRFortress determines that it is necessary to relocate Client Equipment, DRFortress shall use commercially reasonable efforts to minimize the interference with Client's use of the Services and Client shall cooperate in good faith with DRFortress to facilitate such relocation. DRFortress shall be responsible for any related costs incurred by DRFortress and for Client's reasonable costs for labor performed within the Datacenter directly incurred in connection with such relocation (but not other costs, special or otherwise, incurred by Client). Notwithstanding the foregoing, if such relocation is due to interference of Client Equipment or otherwise required because of Client or its actions, Client shall be responsible for the costs of such relocation, including all costs incurred by DRFortress and Client.

4.6 DRFortress does not warrant or otherwise guarantee the security of Client Equipment or the Datacenter, and Client agrees that DRFortress will not be liable for any inability, failure or mistake in doing so. Client shall provide to the Datacenter Manager any keys or any other means necessary to access such Client Equipment during emergencies.

4.7 Client shall, at its sole cost and expense, promptly (but in any event no later than 5 business days after demand by DRFortress) remove any unused/dead cables in the Space, Datacenter and/or any other portion of the Building (without providing Client the right to have any cabling except to the extent set forth in any Order), and promptly repair all damage resulting from such removal. If Client fails to comply with the foregoing terms of this Section, then DRFortress may, upon 48 hours written notice, remove such unused/dead cables. Moreover, DRFortress may repair those portions of the Datacenter and/or any other portion of the Building damaged by the removal (whether performed by DRFortress, Client, or a 3rd party), and Client shall, upon demand, promptly pay to DRFortress all related costs and expenses, including, without limitation, DRFortress' administrative fee of 15% of the cost of such work.

4.8 If Client or any Authorized Person, Accompanying Person, or Associated Entity damages the Datacenter or any equipment contained therein, DRFortress shall have the right and may, in its sole discretion, repair such damage and Client shall, upon demand, promptly pay to DRFortress all costs and expenses incurred in connection therewith, including, without limitation, DRFortress' administrative fee of 15% of the cost of such work.

5. CLIENT REPRESENTATIONS

Client represents and warrants that at all times: (a) Client has, and will maintain, the legal right and authority to install and use Client Equipment as contemplated under this MSA, (b) the performance of its obligations under this MSA and use of Services and Client Equipment will not violate applicable manufacturer's specifications, laws regulations, rules, regulations, or policies (including the Policies), or unreasonably interfere with other DRFortress clients' use of Services, or with the use of services provided to any clients, licensees, tenants, or other occupants of the Datacenter or Building, and (c) the individual(s) executing this MSA on behalf of Client, including any Order, is/are authorized to do so.

5.1

6. CONFIDENTIAL; INTELLECTUAL PROPERTY

6.1 Except as expressly permitted in this MSA, no Party shall, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to any third party. Information shall be considered Confidential Information of Party if either (a) it is disclosed by the Party to the other Party in tangible form and is conspicuously marked "Confidential", "Proprietary" or the like; or (b)(i) it is disclosed by a Party to the other Party in non-tangible form and is identified as confidential at the time of disclosure; or (ii) it contains the disclosing Party's client/vendor lists, client information, technical information, pricing information, pricing methodologies, information regarding business planning or business operations, or other information that would appear proprietary or confidential to a reasonable person. Notwithstanding anything in this MSA to the contrary, the design of the Datacenter, the Services provided and equipment used at the Datacenter and the configuration, interconnection, switching and routing of telecommunication cables, networks, and services at the Datacenter shall be considered Confidential Information of DRFortress.

6.2 Other than the terms and conditions of this MSA, information shall not be deemed Confidential Information hereunder if such information: (a) is known to the receiving Party prior to receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party, (b) becomes known (independently of disclosure by the disclosing Party) to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party, (c) becomes publicly known or otherwise ceases to be a secret or confidential, except through a breach of this MSA or other breach of confidence, or (d) is independently developed by the receiving Party.

6.3 Each Party shall secure and protect the Confidential Information in the same manner it protects its own trade secrets and confidential information, but not using less than a reasonable degree of care. Each Party may disclose the other Party's Confidential Information where (a) the disclosure is required by applicable law or regulation or by an order of a court or other governmental body having jurisdiction after giving reasonable notice to the other party with adequate time for such other Party to seek a protective order; (b) if in the opinion of counsel for such Party, disclosure is advisable under any applicable securities laws regarding public disclosure of business information; or (c) the disclosure is reasonably necessary and is made to that Party's, or its Affiliates', employees, officers, directors, attorneys, accountants and other advisors, or the disclosure is otherwise necessary for a Party to exercise its rights and perform its obligations under this MSA, so long as in all such cases referenced in the clauses above the disclosure is no broader than necessary and the person or entity receiving the disclosure agrees prior to receipt to keep the information confidential. Each Party is responsible for ensuring that any Confidential Information disclosed pursuant to this MSA (other than disclosures pursuant to clauses (a) and (b)) is kept confidential by the person receiving the disclosure to the same extent that the receiving Party must keep the information confidential.

6.4 Notwithstanding the restrictions set forth in this MSA, during the Term: (a) DRFortress may issue a press release announcing Client's entry into the Datacenter without obtaining Client's consent; and (b) either Party may publicly refer to the other Party, orally and in writing, as a client or vendor of services of or to the other Party, as the case may be, without obtaining consent from such other Party.

6.5 Client is and shall remain exclusively entitled to all right, title and interest in and to all of Client's Technology, its Confidential Information and other intellectual property. DRFortress is and shall remain exclusively entitled to all right, title and interest in and to all of DRFortress' Technology, its Confidential Information and other intellectual property. No Party shall, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the Technology or other property of the other Party.

7. NO 3rd PARTY BENEFICIARIES; INDEMNIFICATION

7.1 DRFortress and Client agree that there shall be no 3rd party beneficiaries to this MSA including, but not limited to, the insurance providers for any Party.

7.2 Client shall indemnify, defend, protect and hold harmless DRFortress, its Affiliates and their respective employees, officers, directors, attorneys, accountants and other advisors (collectively, the "Indemnified Parties"), from and against any and all costs, damages, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees and costs) resulting from any claim, suit, action, or proceeding brought by any third party against any Indemnified Party alleging (a) the infringement or misappropriation of any intellectual property right or other unlawful or illegal wrongdoing by Client relating to the delivery or use of Services by Client, its Associated Entities or their respective officers, directors, principals, employees, agents, assignees and sublicensees; (b) personal or physical injury or damage to tangible property caused by Client or any Authorized Person, Accompanying Person or Associated Entity, or their respective officers, directors, principals, employees, agents, assignees or sublicensees; (c) any work done at the Datacenter by or for Client, or any negligent act or omission by Client or any

Authorized Person, Accompanying Person or Associated Entity, or their respective officers, directors, principals, employees, agents, assignees and sublicensees, or any breach of this MSA by Client; and (d) any damages arising out of the Services or the failure of Services, or the use by Client or its employees, agents, contractors, assignees or sublicensees of the Datacenter, or any claims that Client has failed to fulfill a contractual obligation with a third party, or the destruction of or damage to Client Equipment, except as caused by DRFortress' gross negligence or willful misconduct.

7.3 DRFortress shall indemnify, defend and hold harmless the Client and its Affiliates, owners, officers, directors, employees, and agents of Client or of the Affiliates of Client from any and all liability, damages, costs and expenses (including reasonable attorneys' fees and expenses) for personal injury or damage to tangible property resulting from the gross negligence or willful misconduct of DRFortress.

7.4 Through counsel of its own choosing, an Indemnified Party (including for purposes of this Section a party indemnified under Section 8.3) has the right to participate in (but no control over the defense of) any proceeding in which it is being indemnified under this MSA. In such event the Indemnified Party shall be solely responsible for paying the legal fees and expenses for its own counsel. The indemnifying party shall, however, continue to be solely responsible for all other expenses relating to the action, including the legal fees and expenses of the counsel it selects to defend the claims. The indemnifying party shall not take any action which unreasonably exposes the Indemnified Party to a risk of damages, which would not be covered by such indemnity, and may not settle any matter without the prior written consent of the Indemnified Party, which shall not be unreasonably withheld.

8. WARRANTY DISCLAIMER; LIMITATIONS OF LIABILITY

8.1 DRFORTRESS DOES NOT WARRANT THAT THE SERVICES PROVIDED HEREUNDER SHALL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. DRFORTRESS DOES NOT MAKE, AND DRFORTRESS HEREBY DISCLAIMS, ANY AND ALL IMPLIED WARRANTIES WITH REGARD TO THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS MSA, DRFORTRESS DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL EXPRESS WARRANTIES WITH REGARD TO THE SERVICES. ALL SERVICES PROVIDED PURSUANT TO THIS MSA ARE PROVIDED OR PERFORMED ON AN "AS IS", "AS AVAILABLE" BASIS, AND CLIENT'S USE OF THE SERVICES IS SOLELY AT ITS OWN RISK.

8.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS MSA, IN NO EVENT SHALL DRFORTRESS OR CLIENT BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOST PROFITS, LOSS OF BUSINESS, LOSS OF REVENUES, LOSS OF DATA, INTERFERENCE, INTERRUPTION OR CORRUPTION OR ANY OTHER TYPE OF DAMAGES OTHER THAN DIRECT DAMAGES.

8.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS MSA, DRFORTRESS' TOTAL LIABILITY TO CLIENT IN THE AGGREGATE FOR THE ENTIRE TERM (AND REGARDLESS OF WHETHER THE CLAIMS ARE BROUGHT DURING OR AFTER THE TERM) WITH RESPECT TO ALL CLAIMS ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS MSA (INCLUDING ATTORNEYS' FEES) SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CLIENT TO DRFORTRESS FOR THE THREE MONTH PERIOD IMMEDIATELY PRECEDING THE MONTH IN WHICH THE FIRST CLAIM AROSE. AS A FURTHER LIMITATION, DRFORTRESS' MAXIMUM LIABILITY FOR ANY CLAIMS RELATING TO SERVICES OFFERED OR PROVIDED BY DRFORTRESS (A) FOR A NON-RECURRING CHARGE ONLY OR (B) AS REMOTE ASSISTANCE SERVICES, SHALL NOT EXCEED THE AMOUNT OF THE SERVICE FEE FOR SUCH SERVICE PROVIDED ON THE OCCASION GIVING RISE TO THE CLAIM.

8.4 THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY TO ANY AND ALL CLAIMS AND CAUSES OF ACTION WHATSOEVER, REGARDLESS OF WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY.

8.5 DRFortress and Client each waive the right to bring any claim against the other Party arising or in any way relating to this MSA more than one year after the date this MSA expires or is earlier terminated.

8.6 The Parties acknowledge and agree that the disclaimer of warranties and limitations of liability set forth in this Section 9 are essential parts of this MSA and that the Services Fees would be materially higher in the event any portion of such provisions were not enforced in full.

8.7 Notwithstanding anything to the contrary set forth in this MSA or Order, and without limiting any other waivers or limitations set forth in this MSA or Order, Client shall have no termination or abatement rights whatsoever in the event that Client is unable to use or properly utilize any Services as a result of Client's inability to establish Interconnection Services.

9. SUSPENSION; TERMINATION; EXPIRATION; REMEDIES

9.1 DRFortress may suspend any or all of the Services, including suspending the supply of power and denying access to the Datacenter, if (a) Client fails to cure any monetary breach of this MSA within 10 days of notice of the same (five (5) days in the event Client's account is past due on three (3) or more occasions during a six (6) month period); (b) Client breaches any provision of this MSA that in DRFortress' reasonable judgment interferes with DRFortress' operation or maintenance of a Datacenter or with one or more of its other clients' use thereof, and Client fails to cure such breach within 1 hour of being informed of the same; or (c) Client breaches any provision of this MSA that in DRFortress' reasonable judgment has the potential to interfere with DRFortress' operation or maintenance of a Datacenter or with one or more of its other Clients' use thereof, and Client fails to cure such breach within 48 hours of being informed of the same. If DRFortress suspends a Service pursuant to this Section, unless DRFortress has subsequently terminated this MSA as permitted under this MSA, DRFortress shall resume the discontinued Service within 24 hours after it is reasonably satisfied Client has cured the breach(es) which gave rise to such suspension. DRFortress may charge a reinstatement fee equal to the direct out-of-pocket expenses incurred by DRFortress to discontinue and resume the Service.

9.2 DRFortress may terminate this MSA upon written notice of termination to Client, if (a) Client breaches any material term or condition of this MSA (including, without limitation, the failure to pay Service Fees when due) and, if such breach arises due to a failure to pay Service Fees, such failure continues for 3 business days after such Fees are past due, and, with respect to other breaches (other than as provided in this paragraph as subsections (b) and (c) below), Client fails to cure such breach within 10 days after receipt of written notice of breach from the Party sending the notice; (b) Client files a voluntary petition in bankruptcy or commences any voluntary proceeding relating to insolvency, receivership, liquidation, or composition or assignment for the benefit of its creditors; or (c) Client becomes the subject of an involuntary petition, in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation or composition or assignment for the benefit of creditors if such petition or proceeding is not dismissed within 30 days of filing.

9.3 DRFortress may terminate this MSA, by written notice to Client in the event (a) the Datacenter is wholly or partially damaged by fire, windstorm, tornado, flood or by similar causes or casualties, whether or not the Services are affected, and one or more of the following conditions are present: (i) in DRFortress' reasonable judgment, the repairs cannot be accomplished within 180 days after the date of discovery of the damage, (ii) the holder of any mortgage or deed of trust or a ground lessor requires the insurance proceeds be used for purposes other than the repair, (iii) the damage is not fully covered by DRFortress' insurance, (iv) the damage occurs during the final 12 months of the Term, or (v) the cost to repair exceeds \$500,000 in the aggregate; (b) all or any portion of the Datacenter is taken by power of eminent domain, or DRFortress grants a deed or other instrument in lieu of such taking; or (c) any portion of the Datacenter becomes subject to a condemnation proceeding or is condemned and DRFortress' possession is otherwise terminated or abated or DRFortress cannot provide Client with access to the affected Space as contemplated herein for a period exceeding 30 days. If DRFortress does not terminate this MSA, DRFortress shall have a reasonable time within which to rebuild or make any repairs. Client is responsible to repair and replace any damaged or destroyed Client Equipment. DRFortress shall have no liability to Client for any casualty, eminent domain or failure or suspension of Services, or for any annoyance, inconvenience, injury or damage related to such event or any repairs or restoration.

9.4 Client may terminate this MSA upon written notice of termination to DRFortress, if DRFortress breaches any material term or condition of this MSA and such failure continues for 10 business days after receipt of written notice of breach from the Client.

9.5 Upon the expiration or other termination of this MSA (collectively the "Termination Date"), Client shall remove from the Datacenter all Client Equipment and shall return the Space to DRFortress in the same condition it was provided on the Commencement Date, normal wear and tear excepted, pursuant to a time schedule agreed upon by DRFortress and Client, or if no schedule is agreed upon, within 10 days after the Termination Date. Client shall not, however in DRFortress' sole discretion, be permitted to remove any Client Equipment or retrieve any stored data unless payment of all Service Fees and other amounts due to DRFortress are current and not in default. If Client fails to comply with this paragraph, Client shall be responsible for all damages and costs incurred by DRFortress, and during any period of holdover, and shall also pay DRFortress monthly Service Fees equal to 200% of the monthly Service Fees in effect immediately preceding such holdover.

9.6 If Client does not remove the Client Equipment as required by this MSA, whether or not due to its own past current payment(s) or default, DRFortress may remove Client Equipment to a DRFortress or 3rd Party storage area, at Client's expense. DRFortress shall not be liable for any loss or damage caused to Client or its Client Equipment or other property resulting from such removal and storage.

9.7 While neither Party shall be liable to the other for properly terminating this MSA or any portion thereof in accordance with its terms, Client shall be liable to DRFortress for any amounts owed prior to the Termination Date. Notwithstanding anything to the contrary in this MSA, DRFortress has the right to recover from Client all damages recoverable under law or pursuant to this MSA for the period past the end of the Term, if DRFortress terminates this MSA prior to the end of the full Term due to Client's material breach.

9.8 The terms and conditions set forth in this Section 10.8, as well as Sections 3.5, 7, 8.1, 8.2, 8.4, 9, 10.5, 10.6, 10.7, 10.9, 10.10, 12 and 14, and any other terms that by their nature are intended to survive, shall survive the expiration or other termination of this MSA.

9.9 Notwithstanding anything in this MSA or its Orders to the contrary, under no circumstances shall any Order survive the termination of this MSA. DRFortress shall not have any obligation to provide any Services after the expiration or earlier termination of this MSA.

9.10 If DRFortress terminates this MSA because of any reasons set forth in Section 10.2, or if Client terminates this MSA (including any Order) for any reason other than pursuant to Sections 10.3 or 10.4, since the contract damages suffered by DRFortress would be extremely difficult to determine, Client agrees to pay to DRFortress, within 10 days of such termination, an amount equal to 100% of the Service Fees payable for all of the months remaining on the Term of this MSA, as liquidated damages and not as a penalty. These damages shall be in addition to the amounts otherwise then due and payable to DRFortress.

10. SUBLICENSING

10.1 With DRFortress' written consent, not to be unreasonably withheld, Client may sublicense the Space to Sublicensees provided that the following conditions are met: (a) the terms and conditions of such sublicense shall be no less restrictive than this MSA; (b) Client shall not in its dealing with such Sublicensees act or purport to act on behalf of DRFortress or landlord(s) of DRFortress; (c) Client shall require the Sublicensees to abide by the rules set forth in the Policies; (d) the agreement between Client and Sublicensee shall provide that Sublicensee has no right to sublicense, delegate, assign or otherwise transfer its rights to use the Sublicensed Space to any other person or entity without DRFortress' written consent, which consent may be withheld for any reason whatsoever or no reason, and without such consent any such sublicense, delegation, assignment or transfer shall be null and void; and (e) Client shall cause all Sublicensees to agree in writing that in consideration for the sublicense, Sublicensees waive, to the maximum extent permitted under law, any and all claims of any and all types against DRFortress and the landlord(s) of DRFortress, at all times, and that in no event shall DRFortress, or the landlord(s) of DRFortress have any liability to such Sublicensees, including liability to such Sublicensees for any damages whatsoever, including direct damages.

10.2 Notwithstanding anything in this MSA to the contrary, Client shall remain responsible to DRFortress for the performance of all of Client's obligations under this MSA and all other agreements between DRFortress and Client. No sublicense agreement or arrangement between Client and any Sublicensees shall relieve Client from any liability under this MSA. Without limiting the foregoing, Client is responsible for paying the Service Fees for all of the Space (including Sublicensed Space) and the charges for Services for, or relating to, any or all of the Space (including Sublicensed Space). In no event shall DRFortress be deemed to be providing any Services to any Sublicensee for, or relating to, the Sublicensed Space, as the provision of any such Services shall be deemed to be to Client for all purposes under this MSA. In addition, notwithstanding anything in this MSA to the contrary, under no circumstances shall DRFortress be deemed to have any obligations to any Sublicensee. Client must ensure that each and every sublicense agreement or other sublicense arrangement that Client has with a Sublicensee does not have any terms and conditions that (i) are inconsistent with this MSA, or (ii) seek to provide any Sublicensee with rights that Client does not have under this MSA. Without limiting the foregoing or any other restrictions on Sublicensees, no Sublicensee shall have any right to use its Sublicensed Space in any manner that Client is not permitted to use the Space, and Client shall ensure that its agreement with each Sublicensee shall clearly indicate that Sublicensee does not have any right to use its Sublicensed Space in any manner that Client is not permitted to use the Space.

10.3 Sublicensees do not have any rights, separate and apart from Client's rights, to access their Sublicensed Space. Accordingly, only Client's Authorized Persons at the Datacenter may access the Sublicensed Space of Sublicensees. Furthermore, DRFortress is not responsible for restricting a Sublicensee's access to Client's Space located in a cage or suite to which that Sublicensee has access.

11. DEFINITIONS

11.1 "**Accompanying Person**" means each person (other than an employee of DRFortress) who is accompanied by an Authorized Person while at the Datacenter.

11.2 "**Affiliate**" means as to a Party, means any entity controlling, controlled by, or under common control with such party, where the term "control" and its correlative meanings, "controlling," "controlled by," and "under common control with," means the legal, beneficial or equitable ownership, directly or indirectly, of more than 50% of the aggregate of all voting equity interests in an entity. Without limiting the foregoing, but in addition thereto, any Affiliate of, or subsidiary of, DRFortress, Inc. shall be deemed to be an Affiliate of DRFortress.

11.3 "**Associated Entity**" means each individual, company, partnership or other entity of any type which employs, contracts with, or is otherwise associated or affiliated with any of Client's Authorized Persons or Accompanying Persons. Without limiting the foregoing definition, each Sublicensee that has sublicensed Sublicensed Space at the Datacenter shall be an Associated Entity of the Client.

11.4 "**Authorized Person**" means each person who is then included on the most recent list of Authorized Persons given to DRFortress by Client in accordance with the Policies.

11.5 "**Building**" means the facilities, building or set of buildings within which the Datacenter is located, including portions of such facilities with other tenants.

11.6 "**Client Equipment**" means the Client's computer and network hardware (not including stored data) and all other tangible equipment placed by or on behalf of Client in the Space. The Client Equipment shall be identified on a list delivered by Client to DRFortress, as amended in writing from time to time by Client.

11.7 "**Client Services Portal**" means the website www.csp.drfortress.com by which Clients can order Supplemental Services for the Space.

11.8 "**Confidential Information**" means any information disclosed by any Party to the other Parties, directly or indirectly, in writing, orally or by inspection of tangible objects that is designated as "Confidential," "Proprietary" or some other similar designation, including information disclosed to a disclosing party by third parties.

11.9 "**Datacenter Manager**" means the DRFortress supervisor with operations authority, whether onsite or on-call, for the Datacenter.

11.10 "**Datacenter Services**" means all services other than the Supplemental Services set forth in the Order, as applicable, including without limitation (to the extent set forth in the applicable Order, as applicable) providing Space for the Client Equipment at the Datacenter.

11.11 "**Datacenter**" means the co-location facility operated by DRFortress and located at the address set forth in the Order.

11.12 "**Force Majeure Event**" is any cause beyond a Party's reasonable control, including, without limitation, acts of war, acts of God, earthquake, hurricanes, flood, fire or other similar casualty, embargo, riot, sabotage, labor shortage or dispute, cut communication line, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or regulations, condemnation, failure of the Internet or other reason of a like nature not resulting from the actions or inactions of a Party.

11.13 "**Interconnection Services**" means a physical or wireless interconnection, including cable, connections, and other wiring between computers, servers and other hardware within the Datacenter that (a) connects Client to another DRFortress client, (b) interconnects Client Equipment across multiple Spaces, or (c) interconnects Client Equipment and equipment that is provided by DRFortress.

11.14 "**Online Order**" means an order for Services placed by Client via the Client Services Portal and accepted by DRFortress pursuant to DRFortress' then current ordering procedures (as well as any amendment to such order reflected in an Order Amendment agreed to by the Parties in accordance with the terms of the applicable original Order, Order Amendment and this MSA). Online Orders for additional Services shall be deemed accepted upon DRFortress' providing such Services. Any reduction in the scope of Services or Service Fees shall not be deemed accepted without an Order Amendment or Order Confirmation.

11.15 "**Order**" means any Sales Order, Online Order or Phone Orders, including any modifications to the foregoing pursuant to an Order Amendment or Order Confirmation or otherwise allowed under this MSA.

11.16 "**Order Amendment**" means any written mutually agreed upon addendum or amendment to an Order executed by DRFortress and Client, setting forth additional Datacenter Services and/or the Supplemental Services to be provided to Client by DRFortress, including any Service Fees associated therewith, or otherwise amending any provision of an Order. Any Order Amendment executed by DRFortress and Client in connection with this MSA shall be deemed a part of this MSA, including, without limitation, any additional obligations set forth therein. Any Order Amendment executed by DRFortress and Client in connection with this MSA shall be read together with this MSA to avoid inconsistent interpretations. However, in the event of irreconcilable conflicts between the terms of this MSA and the terms of any Order Amendment, the terms of this MSA shall control. The term of service for any Services specified on the applicable Order Amendment shall commence and terminate on the date(s) set forth in the Order Amendment. If no termination date is set forth in the Order Amendment for

a particular Service, then the termination date shall be the earlier of the expiration or earlier termination of this MSA. With respect to a Service not being provided on a continuous basis, the term for that Service shall terminate on the date the DRFortress Service is no longer provided, at DRFortress' option, in its sole and absolute discretion. All obligations, duties and liabilities of Client under this MSA shall fully apply to all matters set forth in all Order Amendments.

11.17 "**Order Confirmation**" means a document, which may include an electronic mail message, that confirms, among other things, the Services, the quantity of such Services, and the prices of such Services, ordered in an Online Order or Phone Order and which is issued by DRFortress and returned to DRFortress pursuant to the instructions set forth in such document. Not all Online Orders or Phone Orders require Order Confirmations.

11.18 "**Order Effective Date**" means, with respect to any Services, the date DRFortress will begin providing such Services to Client, as indicated on the relevant Order. The Order Effective Date of this MSA shall be the first Order Effective Date of any Services provided to Client hereunder.

11.19 "**Party(ies)**" means the party or parties signing this MSA.

11.20 "**Phone Orders**" means an order for Services placed by Client via telephone and accepted by DRFortress pursuant to DRFortress' then current ordering procedures (as well as any amendment to such order reflected in an Order Amendment agreed to by the Parties in accordance with the terms of the applicable original Order, Order Amendment and this MSA).

11.21 "**Policies**" means the procedures, rules, regulations, security practices and policies adopted by DRFortress that are then in effect for the Datacenter, as they may be amended from time to time by DRFortress. DRFortress may post the Policies on the Client Services Portal as a convenience to the Client. Any Policies posted on the Client Services Portal shall be the Policies then in effect whether or not the Client is given notice of such posting or any changes thereto.

11.22 "**Power Services**" means power circuits for AC and/or DC electrical power ordered by Client. For the avoidance of doubt, Power Services do not include power provided by DRFortress as part of a bundled service.

11.23 "**Remote Assistance Services**" means work, undertaken by DRFortress and billable to Client, as reasonably directed by Client, to provide support to Client Equipment, Space or Services; or, as reasonably determined by DRFortress, to comply with Policies. DRFortress, in its sole and absolute discretion, may accept or reject all or any portion of each request for Remote Assistance Services.

11.24 "**Sales Orders**" means the written (electronic or hardcopy) work order form or forms, executed by both DRFortress and Client, setting forth the scope and Service Fees for a Service to be provided to Client by DRFortress. Client represents, warrants and covenants that any person completing and/or submitting and/or executing any Sales Orders on behalf of Client (including but not limited to via the Client Resource Center), has the unconditional authority to execute the Sales Orders on Client's behalf and that, upon such execution, the Sales Orders will be binding against Client, regardless of whether the person in question has actual, apparent or other authority and Client hereby agrees that it shall be unconditionally prohibited and estopped from asserting otherwise, at any time. Sales Orders executed by both DRFortress and Client in connection with this MSA shall be deemed a part of this MSA, including, without limitation, any additional obligations set forth therein. Any Sales Orders executed by DRFortress and Client in connection with this MSA shall be read together with the MSA and any Order Amendment thereto to avoid inconsistent interpretations. However, in the event of irreconcilable conflicts between the terms of a Sales Order and/or this MSA or the terms of any Order Amendment, the terms of this MSA and/or the Order Amendment shall control. Unless specifically stated to the contrary in any applicable Order Amendment or this MSA, the term of service for a particular Service shall commence and terminate on the date(s) set forth in the Sales Orders as set forth explicitly or determined based on the stated term. If no termination date determinable based on the Sales Orders or any applicable Order Amendment for a particular DRFortress Service, then the termination date shall be the earlier of the expiration or earlier termination of this MSA. With respect to a Service not being provided on a continuous basis, the term for that Service shall terminate on the date the DRFortress Service is no longer provided, at DRFortress' option, in its sole and absolute discretion. In the event that DRFortress continues to provide a Service after the termination date determined by the applicable Sales Orders, the applicable Service shall be provided on a month-to-month basis at DRFortress' then-current rates, as determined by DRFortress in its sole discretion, and in accordance with all other terms and conditions of this MSA, the Sales Order or any Order Amendments thereto. All obligations, duties and liabilities of Client under this MSA shall fully apply to all matters set forth in all Sales Orders.

11.25 "**Service Fees**" means charges for Services as identified in the applicable Order, as applicable. Certain Services may accrue one-time, non-recurring charges and/or monthly recurring charges that recur regularly during the life of the Term.

11.26 "**Services**" means the Datacenter Services, Supplemental Services and any other services provided by DRFortress to Client pursuant to this MSA.

11.27 "**Space**" means that licensed portion or portions of the Datacenter made available to Client as specified in an Order, as applicable.

11.28 "**Sublicensed Space**" means the portion of the Space sublicensed to a Sublicensee by Client pursuant to the terms of this MSA.

11.29 "**Sublicensee**" means a client of Client or other third party who sublicenses all or part of the Space from Client pursuant to this MSA.

11.30 "**Supplemental Services**" means all services other than the Datacenter Services set forth in the applicable Order, including, without limitation (to the extent set forth in the applicable Order): (a) Interconnection Services; (b) Power Services; and (c) Remote Assistance Services.

11.31 "**Technology**" with respect to any Party means such Party's proprietary technology, including (with respect to DRFortress) Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, business methods, and any related intellectual property rights throughout the world (whether owned by such Party or licensed to such Party from a third party) and also including any derivatives, improvements, enhancements or extensions of Technology conceived, reduced to practice, or developed by such Party or a related party during the Term.

11.32 "**Term**" means the period or period of time, as set forth in this MSA and/or an Order, during which DRFortress and Client are obligated to perform under this MSA.

12. MISCELLANEOUS PROVISIONS

12.1 "**Force Majeure; Court Order; Cancellation.**" No Party will be liable for any failure or delay in its performance under this MSA, other than its obligation to make a payment of money under this MSA due to a Force Majeure Event, provided that the non-performing Party: (a) gives the other Party prompt written notice of such cause, and (b) takes all reasonable steps to promptly correct such failure or delay in performance. Neither DRFortress nor Client shall be liable for its failure or delay in its performance under this MSA if such failure or delay is in compliance with and pursuant to an order issued by a court (or other tribunal) of competent jurisdiction. If DRFortress is unable to provide applicable Services for a period in excess of 30 consecutive days for any reason set forth in this section, any Party may cancel this MSA upon written notice, and all Parties shall be released from all liability accruing under this MSA on and after the effective date of such cancellation.

12.2 "**Governing Law; Dispute Resolution.**" Intentionally Omitted.

12.3 Intentionally Omitted

12.4 "**Severability; Waiver.**" In the event any provision of this MSA is held by a tribunal of competent jurisdiction to be contrary to any law or regulation, the remaining provisions of this MSA will remain in full force and effect. The Parties shall not be deemed to waive any of their rights or remedies under this MSA unless such waiver is in writing and signed by the Party to be bound. The waiver of any breach or default of this MSA shall not constitute a waiver of any subsequent breach or default.

12.5 "**Assignment.**" The rights accorded Client under this MSA, or under any Orders, are personal to Client and except as expressly set forth herein may not be assigned, sublicensed, or otherwise transferred (each a "**Transfer**") in any fashion, regardless of whether such an arrangement is characterized as an assignment, a sublicense, a co-location agreement or any other agreement, without the prior written consent of DRFortress, which consent shall not be unreasonably withheld. DRFortress may assign this MSA and/or delegate its obligations under this MSA in whole or in part without obtaining the consent of Client or any other party.

12.6 "**Notice.**" Any notice or communication required or permitted to be given under this MSA may be delivered by hand, sent by overnight courier, at the addresses set forth in the most recent Sales Order or at such other address as may hereafter be furnished. Such notice will be deemed to have been given as of the date it is delivered unless such date is a weekend or holiday, in which event such notice will be deemed delivered on the next succeeding business day.

12.7 "**Relationship of Parties.**" DRFortress and Client are independent contractors and this MSA (including all Orders) will not establish any relationship of partnership, joint venture, employment, franchise or agency between DRFortress and Client.

12.8 "**Director, Officer and Employee Liability.**" Unless otherwise provided in writing, no Party's directors, officers or employees shall have any personal liability to any other Party with respect to this MSA. Except as may be specifically otherwise consented to in writing by an Affiliate of a Party (and none of the other terms of this MSA shall be deemed to constitute such consent), no Party's Affiliates shall have any liability to any other Party with respect to this MSA, including with respect to any Orders.

12.9 "**Entire MSA; Counterparts.**" This MSA (including all Orders) constitutes the complete and exclusive agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. This MSA (including all Orders) may be executed in counterparts.

12.10 **Language.** If this MSA is translated into another language, the translation is for the convenience of the Client and the provisions of the version of this MSA (including all Orders) set forth in English shall prevail for all purposes.

12.11 **Headings.** Headings used in this MSA are for reference only.

12.12 **Binding Effect.** This MSA will bind and inure to the benefit of each Party and each Party's successors and permitted assigns.

12.13 **Delivery of Certificate.** Client shall, at any time and from time to time, upon not less than 10 days' prior written notice from DRFortress, execute, acknowledge and deliver to DRFortress a statement in writing certifying the following information, (but not limited to the following information in the event further information is requested by DRFortress): (a) that this MSA (including all Orders) is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this MSA (including all Orders), as modified, is in full force and effect); (b) the dates to which the rental and other charges are paid in advance, if any; (c) the amount of Client's security deposit, if

any; and (d) acknowledging that there are not, to Client's knowledge, any uncured defaults on the part of DRFortress under this MSA (including all Orders), and no events or conditions then in existence which, with the passage of time or notice or both, would constitute a default on the part of DRFortress under this MSA (including all Orders), or specifying such defaults, events or conditions, if any are claimed. It is expressly understood and agreed that any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Datacenter and/or Building. DRFortress shall prepare a draft of such statement at its sole expense and deliver such draft to Client at the time of its written notice requesting the statement from Client. Client's failure to deliver such statement within such 10 day period shall constitute an admission by Client that all statements contained therein are true and correct. Additionally, Client's failure to deliver such statement within such 10 day period shall constitute a material breach and default by Client under this MSA.